

ARKANSAS SUPREME COURT

No. CR 09-105

REGGIE PATTERSON
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered April 23, 2009

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
LINCOLN COUNTY, LCR 2004-60,
HON. ROBERT H. WYATT, JR.,
JUDGE]

MOTION TREATED AS MOTION FOR
RULE ON CLERK AND DENIED.

PER CURIAM

In 2006, petitioner Reggie Patterson, who is also known as Reggie Joe Patterson, was found guilty by a jury of aggravated robbery, first-degree battery, residential burglary, aggravated assault and theft of property. He was sentenced to an aggregate term of 170 years' imprisonment. The Arkansas Court of Appeals affirmed. *Patterson v. State*, CACR 07-186 (Ark. App. Nov. 28, 2007).

Subsequently, petitioner filed in the trial court a pro se document captioned as a supplemental brief in support of a petition pursuant to Arkansas Rule of Criminal Procedure 37.1. The court treated the pleading as a verified pro se petition for Rule 37.1 relief and denied the petition in an order entered on August 28, 2008. Petitioner timely filed a notice of appeal on September 10, 2008, from the order of denial.

On February 3, 2009, petitioner tendered a partial record on appeal to this court, along with the instant motion. Now before us is petitioner's pro se motion for belated appeal in which he seeks leave to lodge the record belatedly and proceed with an appeal of the trial court's order. A motion for belated appeal will be treated as a motion for rule on clerk if the notice of appeal is timely filed.

Holland v. State, 358 Ark. 366, 190 S.W.3d 904 (2004) (per curiam). We thus treat the petitioner's motion as one for rule on clerk pursuant to Arkansas Supreme Court Rule 2-2(b).

All litigants, including those who proceed pro se, must bear the responsibility of conforming to the rules of procedure. *Skinner v. State*, 344 Ark. 184, 40 S.W.3d 269 (2001) (per curiam) (citing *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam)). If a petitioner fails to tender the record in an appeal in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. See *Skinner v. State*, supra. The fact that a petitioner is proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing procedural rules. *Id.*

The time in which a record on appeal must be lodged is governed by Arkansas Rule of Appellate Procedure—Civil 5(b), made applicable to criminal cases by Arkansas Rule of Appellate Procedure—Criminal 4(a). The time to lodge the record can be extended from the initial period of ninety days to seven months from the date of the entry of the judgment. Ark. R. App. P.—Civ. 5(b). Among other requirements under the rule, Appellate Civil Rule 5(b)(1) requires the order of extension to be entered prior to the expiration of the initial ninety-day period.

Here, petitioner filed a motion to extend the time for filing the record on appeal, but no order was entered by the trial court before the ninety-day period expired.¹ Petitioner places the blame on the trial court for failing to timely enter an order granting the motion for extension of time. However, when proceeding pro se, it is not the responsibility of the circuit clerk, circuit court or anyone other than the petitioner to perfect an appeal. *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d

¹Moreover, as it appears that there was no stenographically-reported material for inclusion in the record, no discernable ground to extend the time to prepare and lodge the record was present in this case. Ark. R. App. P.—Civ. 5(b)(1).

155 (1990) (per curiam). Petitioner was therefore solely responsible for ensuring that all the requirements in Appellate Civil Rule 5(b) were met and has stated no good cause for his failure to comply with the rules of procedure or to timely lodge the record on appeal.

Motion treated as motion for rule on clerk and denied.